

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D32281
O/kmb

_____AD3d_____

Submitted - June 21, 2011

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2009-07409

DECISION & ORDER

The People, etc., respondent,
v William Dineen, appellant.

(Ind. No. 08-00610)

Jillian S. Harrington, New York, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Lauren E. Grasso and Andrew R. Kass of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (DeRosa, J.), rendered July 29, 2009, convicting him of assault in the second degree (two counts) and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

After the jury announced its verdict, but before the jury was dismissed, defense counsel argued that the verdict was repugnant because the defendant was acquitted of the first and second counts of assault in the first degree (Penal Law § 120.10[1]), but was convicted under the third and fourth counts of assault in the second degree (Penal Law § 120.05[1]). The defendant also was convicted under the fifth and sixth counts of assault in the second degree (Penal Law § 120.05[2]) and the seventh count of criminal possession of a weapon in the fourth degree (Penal Law § 265.01[2]).

A colloquy ensued in which defense counsel consented to the remedy proposed by the County Court, which was to dismiss the third and fourth counts charging assault in the second degree (Penal Law § 120.05[1]), thereby obviating the need to resubmit the matter to the jury. Accordingly,

September 20, 2011

Page 1.

PEOPLE v DINEEN, WILLIAM

the defendant waived his claim of repugnancy (*see People v Cervantes*, 242 AD2d 730; *People v Abreu*, 184 AD2d 707; *People v Gupta*, 86 AD2d 960).

The defendant was afforded the effective assistance of counsel (*see People v Taylor*, 1 NY3d 174, 177; *People v Benevento*, 91 NY2d 708; *People v Rivera*, 71 NY2d 705).

The sentence imposed was not excessive (*see People v Thompson*, 60 NY2d 513, 519; *People v Suitte*, 90 AD2d 80).

MASTRO, J.P., CHAMBERS, AUSTIN and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court